

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7372 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and Sd/-

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements? YES
  2. To be referred to the Reporter or not? YES :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? NO
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO
  5. Whether it is to be circulated to the Civil Judge? : NO  
NO

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HALAR UTKARSH SAMITI AND ANOTHER

Versus

STATE OF GUJARAT  
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Appearance:

MR ND NANAVATI for M/S. SINGHI & BUCH ASSOCIATES  
for the Petitioners  
MR BP TANNA & MR HJ TRIVEDI for the Respondents  
1,2 & 5  
MR AKSHAY H MEHTA for the Respondent No. 3  
MR VAIDYANATGHAN as instructed by MR GN SHAH  
for the Respondent No. 4  
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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE D.H.WAGHELA

Date of decision: 10/12/1999

ORAL JUDGEMENT (Per R.K.Abichandani, J.)

The petitioners have approached this Court by way of this public interest litigation challenging the action/ proposed action on the part of the respondents Nos.1 to 3 of allowing the setting up of a huge pipeline through a declared marine sanctuary. They seek a Mandamus for setting aside the decision allegedly taken by the respondents Nos.1, 2, 3 & 5 to permit the respondent No.4 to lay pipeline as per the modified Route 2-A which passes through reserve forest and marine sanctuary in the Gulf of Kutch.

2. According to the petitioners, the respondent No.4, which is a public limited company promoted by Bharat Petroleum Corporation Limited and Oman Oil Company Limited, is in the process of setting up an oil refinery at Bina in Madhya Pradesh. The respondent No.4 made an application on 6.5.1996 to the respondents Nos.1, 2 & 3 for grant of permission for laying petroleum/ oil pipeline as mentioned in the plan. That pipeline was to be laid from a point off the Vadinar Coast in the Gulf of Kutch for the purpose of transporting crude oil and petroleum products. According to the petitioners, it was admittedly to pass through an ecologically sensitive area. It is alleged that in May 1998, the Prime Minister of India wrote a letter to the Chief Minister of Gujarat asking the Chief Minister to grant clearance to the pipeline of the respondent No.4. According to the petitioners, the Central Government by its letter dated 20.8.1998 had stated that the respondent No.4 should not be allowed to put its pipeline in the proposed area and, in fact, had asked the State Government to advise the respondent No.4 to explore an alternate alignment which excludes the area of Gulf of Kutch which was an ecologically sensitive area. It is further alleged in the petition that for some unknown and unfathomable reason, pressure was put upon the Central Ministry of Environment to reconsider its stand in November 1998 and it was compelled to inform the State Government that the Ministry of Environment had decided to give clearance to the project of the respondent No.4 under the Forest (Conservation) Act, 1980. However, the Ministry of Environment, even at that time, stipulated that clearance would not entitle the respondent No.4 to take up any activity in violation of the Wild Life (Protection) Act, 1972 and that it would be the responsibility of the State Government to ensure that the provisions of that Act were followed both in letter and spirit. It is alleged in paragraph 8 of the petition that, in spite of the aforesaid view conveyed by the Ministry of Environment, the office of the Prime Minister and at its behest the

Ministry of Petroleum and Natural Gas continued to pressurise the State Government to expeditiously grant the permission. The Principal Secretary to the Prime Minister called for a meeting of various officers on 20.11.1998 to pressurise the Government of Gujarat to clear the said proposal, and the Ministry of Petroleum and Natural Gas addressed communications in December 1998 and March 1999 asking the Government of Gujarat to clear the project. It is also alleged that at about the time when the Central Government lost the confidence of the parliament, the Prime Minister's Secretariat addressed a strongly worded letter to the Government of Gujarat virtually ordering the Government of Gujarat to grant clearance to the said project and report the position immediately to the Prime Minister. Thereafter, the State Government called upon the respondent No.4 to give more particulars of the location of the pipeline. On 15.5.1999, the respondent No.4 made a presentation to the State Government setting out various alternative routes for the pipeline. According to the petitioners, the presentation itself shows that each one of the routes suggested would be passing through or was perilously close to the most precious coral preserve, marine life, flora and fauna and mangroves amongst others. Another application was made on 4.6.1999 by the respondent No.4 based on the presentation for routing the pipeline. The State Government thereafter by its letter dated 29.6.1999 informed the respondent No.4 that none of the routes suggested by the respondent No.4 could be justified for clearance under the Wild Life (Protection) Act, 1972 on account of the possible damage to corals, marine life and mangroves existing all along the four suggested routes. The respondent No.4, in June 1999, was asked by the State Government to suggest an alternative route where there was no possibility of damage to marine life, mangroves and coral habitat or where there was least possible revocable damage to the wild life and also to put forward a plan for regenerating the corals, mangroves and other wild life of marine ecosystem with details of specific mitigation measures for improvement of marine biota and environmental improvement in the existing marine sanctuary and the national park. According to the petitioners, in spite of this stand of the State Government, the respondent No.4 is insisting on choosing one of the routes mentioned by it in its presentation. The respondent No.4 made a representation dated 18.8.1999 in this regard. It is also alleged that in the State of Madhya Pradesh a Congress Government is in power and, according to that Government, there is an alleged delay in clearance of the project, for which delay, it wants to throw the blame on BJP Government at the Centre and in

Gujarat. It is further alleged, on the other hand the BJP wants to get kudos from the electorate claiming that it could get an expeditious clearance for the pipeline and has thereby done great service to the State of Madhya Pradesh. It is alleged that in this political imbroglio, the Government of Gujarat and the people of Gujarat and all the precious national heritage are sacrificed and the Central Government is pressurising the State Government to grant such clearance, the advantage of which can be taken in the elections in Madhya Pradesh and a claim made that it could convince the BJP Government in Gujarat to clear the issue expeditiously. In this regard, the petitioners have referred to certain newspaper cuttings which are at Annexures-4 to 7 to the petition. It is also alleged that the Central Government is pressurising the State Government to go to the extent of opening up a large area of the sanctuary and marine park for such activities by passing a resolution of the State Legislature under Section 26-A (3) and Section 25 (3) of the said Act for de-notifying a large area of marine national park and sanctuary to enable the respondent No.4 to put up its pipeline and that the entire exercise is sought to be presented to the State and the nation as a fait accompli. By amendment in the petition, it is further contended that, from the latest press reports it appears that the State Government have decided to accord permission to the respondent No.4 to lay the pipe. It is stated that the Government have not denied the reports appearing in the press. It is also stated that the State Government had in exercise of its powers conferred under Section 18 of the said Act issued notifications dated 20.7.1982 and 12.8.1980 declaring certain areas specified therein as marine sanctuary. It is alleged that the proposed modified Route 2-A will seriously affect the marine sanctuary because of its adverse effect on the wild life. It is stated that Item No.14 of the Schedule to the Notification dated 20.7.1982 mentions "Coral area near Narara Reef" and that the proposed Route 2-A passes through Narara Reef area and it also passes through the reserve forest declared under Section 20 of the Forest Act as well as through the marine sanctuary declared by the Notification dated 20.7.1982. It is also alleged on the basis of press reports that a meeting was convened in New Delhi on 18.9.1999 in the office of the Prime Minister where again top functionaries were present and the State Government, according to the petitioners, has been irrevocably pressurised to grant permission to put up the pipeline on the Route 2-A. According to the petitioners, it has been recently decided to clear the project.

It is also alleged that the proposed modified Rout 2-A passes through ecologically sensitive area which would destroy at least 15,000 mangroves and that it is the same old route which has been fraudulently described as a modified route. It is further alleged that the action of granting clearance by de-notifying the area would be hazardous and arbitrary. It is contended that the provisions of Sections 29 and 33 of the said Act totally prohibit carrying out of any activities in an area which is declared as a marine national park or a marine sanctuary.

3. In the affidavit-in-reply filed on behalf of the respondents Nos.1, 2 & 5, it has been stated that the petitioners have suppressed material facts inasmuch as they were also petitioners in Special Civil Application No.2840 of 1999 and Special Civil Application No.11271 of 1998 which were rejected by this Court. It is stated that they were attempting to challenge the laying down of pipelines for two other projects, i.e. Reliance Petroleum Limited and Essar Oil Limited and for the reasons stated in those judgments, their contentions were negatived. It is stated that the judgments of this Court in Special Civil Application No.11251 of 1998 as well as Special Civil Application No.403 of 1998 were available and known to the petitioners but they have suppressed them in the petition. It is further stated that the petition is premature inasmuch as no final decision as contemplated under the provisions of the Wild Life (Protection) Act has been taken by the State of Gujarat or by the Chief Wild Life Warden as alleged in the petition. It is stated that the entire process is being carried out in accordance with law and the matter is under active consideration of both the respondents Nos.1 & 2. It is further stated that this mega project of national importance is being implemented by a Central Government Undertaking i.e. Bharat Petroleum Corporation Limited and Oman Oil Company in view of the M.O.U. signed by them and also signed by the President of India and Sultanate of Oman. It is stated that this being a project of national importance, its progress is being reviewed and monitored by the Government of India from time to time. It is however denied that there is any pressure and/or endeavour on the part of the Government of India or the Honourable Prime Minister or any functionary or dignitary of the Government of India on the Government of Gujarat or on any of its functionaries or dignitaries for granting any permission in violation of the law. It is further stated that several studies as are mentioned in paragraph 4 of the affidavit were conducted and reports have been submitted to the State of

Gujarat and/or the Chief Wild Life Warden for their consideration and they are under their active consideration. It is reiterated that no final decision has been taken in the matter. It is further stated that no pressure has been exerted on the State Government for taking any decision and the entire process under various provisions of the environmental laws is going through in accordance with the clear mandate of the various provisions of the laws applicable to the subject.

4. In the affidavit filed on behalf of the respondent No.3 Union of India, it has been stated that the proposal of the State Government for diversion of 57.73 hectares of forest land for laying pipeline (off-shore and on-shore) in favour of Bharat Petroleum Corporation Ltd. was accorded, in principle, approval on 6.11.1998 subject to fulfillment of compensatory afforestation on equivalent non-forest land. The attention of the State Government was drawn to the provisions of the Wild Life (Protection) Act, 1972 and it was asked to ensure that Sections 29 and 33 of the said Act are followed. It is further stated that the Chief Wild Life Warden of the State and the State Government are the competent authorities under the Wild Life (Protection) Act, 1972 for granting permission under the Act for any activity inside national park/ wild life sanctuary and therefore the matter has to be decided at that level only. It is also stated that the State Government has submitted a revised proposal for diversion of 33.89 hectares of forest land for the project in October, 1999 which is being processed as per the rules and guidelines prescribed under the provisions of the Forest (Conservation) Act, 1980. It is further stated that a proposal for environmental clearance under the Environment (Protection) Act, 1986 for the proposed modified route is yet to be received in the Ministry. It is also submitted that the Government of India has requested the State Government to process the matter expeditiously within the framework of the law, having due regard to the importance of the project in the national perspective.

5. On behalf of the respondent No.4 Company, an affidavit has been filed that the respondent No.4, on the basis of the project approvals from the Government of India, is proposing to set up a grassroot refinery at Bina, which is a backward region in the State of Madhya Pradesh. The respondent No.4 for its refinery has to import crude to be discharged at a Single Point Mooring (SPM) in high-sea in the Gulf of Kutch and thereafter it is to be transported through a sub-sea/ on-shore pipeline

to a Crude Oil Terminal (COT) at Vadinar in the District of Jamnagar for further transportation through a pipeline to Bina. It is stated that pipelines of Reliance Petroleum Limited and Indian Oil Corporation also pass through the nearby marine national park/ sanctuary. It is stated in paragraph 3 of the affidavit that both the SPM and COT are outside the marine national park/ sanctuary and only the inter-connecting pipeline passes through the sanctuary. It is denied that any permission has already been granted by the respondents Nos.1, 2 & 3 for the modified Route 2-A of the pipeline from SPM to COT at Vadinar. It is stated that this petition would delay the implementation of this project of national importance if it is entertained.

6. The petitioners, by their rejoinder filed by the petitioner No.2, stated that even on the basis of the affidavit-in-reply filed by the respondents, the proposed modified Route 2-A pipeline passes through the marine sanctuary and reserve forest and that the reserve forest and marine sanctuary are situated between the Low Tide Line (LTL) and the High Tide Line (HTL). Moreover, the Central Government has accorded permission for diversion of forest land on the proposal submitted by the State Government. According to the petitioners, the petition cannot therefore be termed as premature. It is contended that when the Central Government had earlier granted, in principle, approval, it does not lie in the mouth of the State Government now to state that no final decision has been taken under Section 29 of the said Act. It is stated that such a permission is now only an empty formality. The petitioners have reiterated that no permission can be granted by the State Government to lay pipelines for transportation of crude oil under Section 29 of the said Act.

7. Both the sides have addressed the Court at length and have requested to treat the matter as finally heard.

8. It was contended by the learned senior counsel appearing for the petitioners that the pipeline project of the respondent No.4 through the modified Route 2-A will destroy the wild life and that under Section 29 of the said Act, the State Government has no power to grant permission unless such destruction is for the betterment of wild life. It was argued that the project of laying pipeline through a marine sanctuary can in no way bring about a better management of wild life. It was contended that the pipeline would entail exploitation and removal of wild life also. In view of the wider definition of the expression "wild life" contained in Section 2 (37) of

the said Act, the learned senior counsel argued that no alteration of the boundaries of a sanctuary could be made except on a resolution passed by the Legislature as provided by Section 26-A (3) of the Act and therefore what cannot be done directly without passing such a resolution cannot be done indirectly by granting permission under Section 29 of the Act. The learned counsel contended that, keeping in view the directives enshrined in Article 48-A of the Constitution of India and the fundamental duty of the citizens under Article 51-A (g) of the Constitution as also the objects of the said Act, it should be a matter of prime concern for one and all to prevent destruction, exploitation or removal of wild life. It was argued that the earlier decision of this Court in Special Civil Application No.11251 of 1998 in which the Court had in context of a similar pipeline project of Reliance Petroleum Limited held that, instead of resorting to de-notification of corridors when it was considered advisable to grant a right of way, that would help in improvement and better management of marine sanctuary and national park as well as the wild life therein, is under challenge before the Supreme Court in Special Leave Petition which has been filed by the petitioners. It was submitted that, in any event, the consideration which weighed with the Court in that matter was that the project was completed. It was observed that, looking to the stage the project of the industry had reached, the Court felt slow in causing interference. In the present case, according to the learned counsel, the project has not been implemented so far and the preventive approach would warrant stopping of the project rather than throwing out the petition on the ground of the its being premature. It was also contended that the State Government has not considered alternative routes, such as, Mundra, Balachadi, Jodia, Bed, Mungdi, Sikka and Pipavav.

It was also argued that even when the Legislature may resolve under Section 26-A (3) of the Act, it would be necessary that the area should cease to be an area of adequate significance for protecting wild life. On his attention being drawn to the relevant provisions of the Coastal Regulation Zone (CRZ) and Section 24 of the Environment (Protection) Act, 1986, which gave an overriding effect to even the rules and orders made under the Act, the learned counsel contended that, in fact, no construction activity which would include laying pipelines can be done under clause (xi) of paragraph 2 of the CRZ Notification and that clause (xii) which permits laying of pipelines for carrying oil was not applicable.



9. The learned counsel appearing for the respondent No.4 contended that Section 24 of the Environment (Protection) Act, 1986 and the Rules made therein and anything which was inconsistent therewith contained in any enactment other than the said Act, gave an overriding effect to the provisions of the Act. Therefore, if the pipeline for carrying oil could be allowed under the CRZ, the said order would have an overriding effect over any order refusing to permit laying down of pipeline under the provisions of the said Act. It was also contended that Section 29 of the said Act did not prohibit the State Government from granting permission for laying such pipeline. Moreover, under Clause (i) and (ii) of paragraph 2 of the CRZ Notification dated 19.2.1991, there were exceptions made in favour of the industries directly related to water front or directly needing foreshore facilities. It was submitted that an application for environmental clearance was already forwarded through the State Government by respondent No.4 and that these aspects are yet to be considered by the Central Government. He also contended that paragraph 6 (1) of Annexure-I of the CRZ Notification related to the coastal stretches within 500 metres of High Tide Line on the landward side which are classified into four categories. The areas which are ecologically sensitive fall in Category I, along with the areas between LTL and HTL which are sub-classified in the said category. It was however not disputed that the proposed pipeline passes through the marine sanctuary and the forest area. The learned counsel appearing for the respondents Nos.1, 2 & 5 submitted that the State Government had not taken any decision so far in the matter and that the petition is premature. He stated that before taking any final decision in the matter, the State Government will consider all other routes which are mentioned during the hearing. He also stated that the State Government will pre-assess the damage that may be caused to the ecology by laying pipeline through any route that may ultimately be sanctioned and impose by way of pre-condition liability on the respondent No.4 to pay the damages so assessed before undertaking the project. The learned counsel submitted that the State Government was independently exercising its powers without any pressure from any quarters.

10. From the rival contentions of the parties, it would appear that the provisions of Section 29 of the Wildlife (Protection) Act, 1972 fall for our consideration and are therefore reproduced hereunder:

"29. Destruction, etc. in a sanctuary prohibited

without permit- No person shall destroy, exploit or remove any wild life from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied that such destruction, exploitation or removal of wild life from the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit.

Explanation: For the purposes of this section,  
grazing or movement of live-stock  
permitted under clause (d) of  
section 33 shall not be deemed to  
be an act prohibited under this  
section."

11. The State Government had issued Notification under Section 18 (1) of the said Act on 12.8.1980 declaring the forest areas in the Gulf of Kutch which were specified in the Schedule falling in Jamnagar Forest Division as a Marine Sanctuary. By Notification dated 20.7.1982, additional fresh areas of the Gulf of Kutch falling in the Jamnagar Forest Division were also declared as a Marine Sanctuary. This petition, as stated therein, relates to the area at Item No.14 which is "Coral area near Narara Reef of 84 hectors." The pipeline for conveying oil from SPM to COT is proposed to be laid through the modified Route 2-A, which, according to the petitioners, will destroy the wild life and therefore no permission can be granted in respect thereof under Section 29 of the said Act.

12. The Notification under Section 18 (1) declaring this specified forest areas in the Gulf of Kutch as sanctuaries was issued prior to the amended Section 18 which came into force on 2.10.1991. However, any sanctuary declared by the State Government under Section 18 (1) shall be deemed to be a sanctuary under the Act as amended, in view of Section 66 (3) of the Act. In case where any proceeding under Sections 19 to 25 is pending on the date of the commencement of the Act of 1991, any reserve forest or a part of the territorial waters in the sanctuary declared under Section 18 shall be deemed to be a sanctuary declared under Section 26-A of the said Act. The notifications speak of only the specified forest areas. The forest area specified is near a reef. A reef is a ridge of rock or coral etc. at or near the surface

of the sea. A coral island or reef is formed by growth of coral which is a hard red, pink or white calcareous substance secreted by various marine polyps for support and habitation. As per the description of the specified area, it is a coral area near the Narara reef.

13. As noted above, the respondent No.4 had submitted its proposal for four alternative routes which was examined and the Government had taken up a stand on 29.6.1999 that none of the routes could be justified asking the respondent No.4 to re-examine the proposal. According to the petitioners, the proposal for the modified Route 2-A has been submitted and a decision has already been taken for granting permission under Section 29-A though not yet formally announced. According to the respondent - State, however no such decision is as yet taken in the matter.

14. The contention on behalf of the petitioners is that there will not be any scope for the State Government to grant permission under Section 29 of the said Act because laying of pipeline will not in any manner be for the improvement or better management of wild life and therefore the exercise undertaken by the State is without jurisdiction. Under Section 29, the Chief Warden shall not grant a permit to destroy, exploit or remove any wild life unless the State Government is satisfied that it is for the improvement and better management of wild life. Therefore, the nature of destruction, exploitation or removal, as the case may be, of wild life as defined in Section 2 (37) of the Act is required to be considered in light of the need to improve and better manage the wild life. The Division Bench in a similar challenge has accepted the contention to the effect that instead of de-notifying the area under Section 26-A (3), if permission is granted upon minimal damage, that would amount to better management of wild life. Apart from that angle, Section 29 of the said Act does not prohibit issuance of permit if in the opinion of the State Government there is no destruction, exploitation or removal of wild life. The word 'destroy' would mean in the context to ruin completely, destroy or kill any wild life. Exploitation of wild life would mean making use of wild life to derive benefit from it. Removal of wild life would be taking off or away any wild life from the place occupied by it. Thus, the State Government has to consider whether there is such destruction, exploitation or removal of wild life involved in granting the permission. A slight damage may not amount to destruction nor would a temporary shift with a plan to restore it amount to removal. The extent of damage

should be such that it amounts to destruction. All these aspects are under consideration of the State Government and it would not be appropriate for this Court to preempt such consideration before any final decision is taken in the matter.

15. As regards the contention that de-notification can be done only by a resolution under Section 26-A (3) of the Act passed by the State Legislature, we only note the statement made on behalf of the State Government that there is no move so far for de-notifying the area under Section 26-A (3) of the Act and the matter is under consideration only under the provisions of Section 29 of the said Act.

16. It appears from the affidavit-in-reply filed on behalf of the respondent No.3 - Union of India that the proposal for environmental clearance under the Environment (Protection) Act, 1986 for the proposed modified route is yet to be received in the Ministry. The Central Government has in exercise of powers conferred by Clause (d) of Sub-Rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 issued notification on 19.2.1991 declaring the coastal stretches of seas, bays, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the HTL and the land between LTL and HTL as Coastal Regulation Zone and imposed restrictions on the setting up and expansion of industrial operations or processes etc. in the CRZ. Paragraph 2 of the notification declared certain activities as prohibited activities. Items (i), (ii), (xii) & (xii) which figured during the arguments are as under:

" 2. Prohibited Activities:

The following activities are declared as prohibited within the Coastal Regulation Zone, namely:

- (i) setting up of new industries and expansion of existing industries, except those directly related to water front or directly needing foreshore facilities;
- (ii) manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment & Forests No.S.O. 594(E) dated 28th July, 1989, S.O. No.966(E) dated 27th November, 1989 and GSR 1037(E)

dated 5th December, 1989;

(iii)

to xxx xxx xxx

(x)

(xi) construction activities in ecologically sensitive areas as specified in Annexure-I of this Notification;

(xii) any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification."

17. The reference to the provisions of the CRZ came up during the hearing because, while laying down the prohibited activities, exceptions were incorporated which included exceptions in favour of laying pipeline for the facilities of carrying oil. This would assume importance in view of Section 24 of the Environment (Protection) Act which gives overriding effect to the provisions of that Act and the Rules or Orders made thereunder notwithstanding anything inconsistent therewith contained in any other enactment. Thus, should any order be made under the Environment (Protection) Act, that would have the effect of overriding the provisions of the said Act. It therefore follows that the consideration of the application for permit under Section 29 of the said Act by the State Government is not only open on the interpretation of the provisions of Section 29 itself, but it would also be open in view of the impact of the orders that may be made under the Environment (Protection) Act, 1986 in view of their overriding effect over the provisions of Section 29 of the said Act as contemplated by Section 24 of the Environment (Protection) Act. Thus, it cannot be said that the State Government has no jurisdiction to consider the question of grant of permit under Section 29 to respondent No.4 and therefore it could not consider the modified proposal on its merits. It is obvious that the State Government and the Central Government will have to take their decisions in consonance with the provisions of law. There is therefore no valid ground for this Court to interject at this stage and stop consideration of the matter by the State Government on the ground of want of

authority under Section 29 of the said Act.

18. The contention raised in the petition that the letter of the Prime Minister to the Chief Minister in connection with the clearance of the project and that the Central Government was pressurising the State Government to grant the said clearance, is wholly misconceived. There are no watertight compartments between the spheres of the Central and State executives. In a cooperative federal structure, the interaction between the Central and State executive authorities would be absolutely essential for good governance. Such interaction for taking administrative decisions cannot be termed as pressure or interference with each other. The executive mind is open to a much wider area of consideration and can take its decisions after exchange of views. The Constitution of India has leaned towards a stronger Union by providing that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and that the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Chapter II of Part XI of the Constitution spells out broadly the guidelines for administrative relations between the Union and the States and clearly warrants interaction between the Government of India and the State Governments. Therefore, there is nothing unusual if the Prime Minister in exercise of the executive power of the Union issues necessary directions to a State which may be warranted by Articles 256 and 257 of the Constitution. There is no question of any impropriety or illegality in the Prime Minister's writing to the Chief Minister in connection with the project before any decision is taken. It would be a trite thing to say that no decision can be taken contrary to the provisions of law and , if the decision violates the law, it can be suitably challenged. In view of these constitutional provisions, the learned counsel appearing for the petitioners rightly did not canvass any argument on this aspect which is emphasised in the petition.

19. The learned counsel for the State Government has made it clear more than once during the hearing that the State Government has not taken any final decision in the matter. He also stated that the State Government will consider even the other routes, such as, Mundra, Balachadi, Jodia, Bed, Mungdi, Sikka and Pipavav, which were named during the hearing and then take its decision in consonance with the laws on the subject. It was also stated that the Government would be pre-assessing the

possible damage that may be caused by the project and impose payment of compensation by the respondent No.4 Company as a pre-condition for granting the permit if at all it is decided to grant it as per the law. It was stated on behalf of the respondent No.4 that the respondent No.4 has incurred huge expenses in respect of the proposed modified route and any change in it would involve huge expenditure and further delay that may cause the project to collapse. When no final decision is taken by the State Government, all its options are open under the law and the purpose of the law cannot be frustrated by any external considerations of the respondent No.4 having already incurred expenses in anticipation of the approval for the modified route suggested by them. Since no final decision is taken so far, as stated on behalf of the State Government, the State Government is directed to consider even other alternative routes that may be available which would not violate the provisions of the said Act and other laws before taking its decision in the matter. Subject to this direction, the Petition is rejected. The Notice is discharged with no order as to costs.

Sd/-

( R.K.Abichandani, J.)

Sd/-

( D.H.Waghela, J.)

(KMG Thilake)

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